

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 14227US01)

In the Application of:)	
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Kevin T. Chan)	Electronically filed:
)	
Serial No. 10/612,729)	August 31, 2007
)	
Filed: July 2, 2003)	
)	
For: METHOD AND SYSTEM FOR)	
AUTOMATIC MEDIA DEPENDENT)	
INTERFACE RECONFIGURATION)	
AND REPAIR)	
)	
Examiner: Mon Cheri S. Davenport)	
)	
Group Art Unit: 2609)	
)	
Confirmation No. 5781)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper responds to the Advisory Action mailed August 16, 2007 ("Advisory Action") in the above-identified application. The Applicant respectfully requests review of the final rejection in the above-identified application, in consideration of the following remarks. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS / ARGUMENTS

Claims 1-30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 5,923,663, issued to Bontemps et al. (hereinafter, Bontemps). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 102

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(b), the Applicant maintains that Bontemps does not disclose or suggest at least the limitation of “determining any one usable media pair from all existing media pairs”, as recited by the Applicant in independent claim 1. The Advisory Action addresses the Applicant’s argument made in his response on the above claim limitation in the Office Action of February 26, 2007. In particular, the Final Office Action refers to Bontemps, FIG. 2, elements 220a and 220b and cites, column 3, lines 58-62:

“A control circuit is provided that toggles (determines) the selected circuit between the first and second states (media pair) until a link detect signal indicates the reception of communication signals (from all existing media pairs). The control circuit holds the select circuit in the particular state in which valid communication signals were detected (determination of the one usable media pair).” -- Text in parentheses as added by examiner.

However, the above does not teach or suggest that “first and second states” are media pairs. Applicant also notes that to the Examiner referenced elements 220a and 220b actually refer to receive contacts and transmit contacts, respectively (column 8, lines 1-3). There is no suggestion that contact pairs 220a/b are ‘states’. Hence, the above interpretation of Bontemps, col. 3, lines 58-62 seems to be without basis.

Furthermore, Bontemps does not teach or suggest “selecting any one channel from all existing channels”, as recited by the Applicant in claim 1. The Office Action refers for support to element 202 and ports 1-N in FIG. 2 in Bontemps, as well as col. 3, lines 58-61 (recited above).

Since the data streams shown in FIG. 2 in Bontemps, from Port 1 through N passing each through a PHY device 218, are never aggregated anywhere in FIG. 2 (but instead individually are coupled “to MII or MAC”), a process of “selecting any one channel from all existing channels” cannot possibly take place in any block depicted in FIG. 2. Correspondingly, no “one channel” resulting from the

selection process is depicted in FIG. 2. In addition, col.3, lines 58-61 cited for support in the office action does not suggest or teach “selecting any one channel from all existing channels”.

The Applicant further maintains that Bontemps does not teach or suggest “assigning said selected any one channel to said any one media pair”. The Advisory Action refers again to Bontemps, col. 3, lines 58-62 (recited above). The recited passage however does not teach or suggest any “assigning”, nor does it teach or suggest “selected any one channel” or “media pair”.

The Applicant also notes that the Advisory Action relies on Bontemps, col. 3, lines 58-62 recited above to reject each of the applicants 3 different claim limitations, apparently interpreting the same two sentences differently for each limitation, which is clearly unreasonable.

On page 2 of the Advisory Action, marked in parentheses in the above citation, the Examiner highlights how he believes the different passages from Bontemps, col.3, lines 58-61 correspond to the Applicant's claim limitation “determining any one useable media pair from all existing pairs”, see above. By looking at the argument made in the advisory action, it appears that **all the elements** of the citation are used to show anticipation of the Applicant's claim limitation.

The Advisory Action, however, then goes on to use the same citation to show supposed anticipation of “selecting any one channel from all existing channels”, notwithstanding the fact that there is no mention of, for example, ‘channel’ in the citation. Importantly, the Advisory Action fails to point out which elements in the above citation may correspond to which elements of the Applicant's claim limitation.

In addition, the Advisory Action then uses the same citation again to also show supposed anticipation of the Applicant's claim limitation “assigning said selected any one channel to said any one media pair.” Again, the Advisory action however fails to point out which elements in the citation may correspond to which elements of the Applicant's claim limitation.

Given the markedly different content of the Applicant's 3 claim limitations, it seems a logical contradiction that Bontemps, col. 3, lines 58-62 is needed in its entirety (as quoted from the Advisory Action above) to supposedly anticipate the Applicant's first claim limitation, while the very same passage is also supposed to anticipate a further two, very different, claim limitations by the Applicant.

The Applicant is led to the conclusion that Bontemps, col. 3, lines 58-62, recited in the Final Office Action, does not anticipate the first claim limitation and/or the second and third claim limitation. In either case, the cited passage by Bontemps

fails to anticipate each and every element of claim 1, as required by MPEP §2131 and cited above, since **the passage cannot reasonably be interpreted differently for each different claim limitation.**

The Advisory Action also provides some further explanation of FIG. 2, referring to Bontemps, col. 7, lines 19-37 and col. 3, lines 44-65. The Applicant notes that contrary to the statement in the Advisory Action, the cited passages do not support at least the statement “the working communication channel is selected from all existing channels”.

The Advisory Action concludes by stating:

“In response to the argument that the each PHY device 218 in FIG. 2 of Bontemps is connected to only one RX/TX pair, it is noted that the PHY 218 has more than one ports (PORT 1-N) and the media pairs are shown in the figure, figure 2 as a whole is an automatic media detection circuit.”

The Applicant points out that this statement is factually erroneous. It can be seen from FIG. 2 that each PHY 218 device is connected to only one RX/TX pair (220a/b). Each RX/TX pair 220a/b is associated with one port only, as can be seen from FIG. 2 from the fact that each PHY 218 is connected (via the RX/TX pair 220a/b) to one element 202, corresponding to precisely 1 port. The Elements 202 are individually labeled to this effect and Bontemps, col. 7, lines 33-35 states: “The ports 202 are individually labeled PORT1, PORT2, ... , PORTN, where “N” is any desired integer for any number of ports 202.” Hence, the Applicant asserts that, despite the Examiner’s statement, each PHY 218 is connected to one port only and hence a selection of ports cannot take place in a PHY 218 device, as asserted above.

Hence, the Applicant respectfully submits that the rejection of claim 1 based on 35 U.S.C. §102(b) be withdrawn and claim 1 made allowable.

Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1. The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1, 11 and 21.

B. Rejection of Dependent Claims 2-10, 12-20, 22-30

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 102(b) as being anticipated by Bontemps has been overcome and requests that the rejection be withdrawn.

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Additionally, claims 2-10, 12-20 and 22-30 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-30.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-30 are in condition for allowance. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Date: August 31, 2007

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